

ELECTRONIC FRONTIER FOUNDATION  
 CINDY COHN (145997)  
 cindy@eff.org  
 LEE TIEN (148216)  
 tien@eff.org  
 KURT OPSAHL (191303)  
 kurt@eff.org  
 KEVIN S. BANKSTON (217026)  
 bankston@eff.org  
 CORYNNE MCSHERRY (221504)  
 corynne@eff.org  
 JAMES S. TYRE (083117)  
 jstyre@eff.org  
 454 Shotwell Street  
 San Francisco, CA 94110  
 Telephone: 415/436-9333  
 415/436-9993 (fax)

Attorneys for Plaintiffs

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

TASH HEPTING, GREGORY HICKS,  
 CAROLYN JEWEL and ERIK KNUTZEN, on  
 Behalf of Themselves and All Others Similarly  
 Situated,  
  
 Plaintiffs,  
  
 v.  
  
 AT&T CORP., et al.,  
  
 Defendants.

No. C-06-0672-VRW

**CLASS ACTION**

**PLAINTIFFS' NOTICE OF MOTION  
 AND MOTION TO EXTEND PAGE  
 LIMIT FOR PLAINTIFF'S OPPOSITION  
 TO MOTION TO DISMISS AMENDED  
 COMPLAINT BY DEFENDANT AT&T,  
 CORP.; MEMORANDUM OF POINTS  
 AND AUTHORITIES**

Courtroom: 6, 17th Floor  
 Judge: The Hon. Vaughn R. Walker,  
 Chief Judge

PLEASE TAKE NOTICE that plaintiffs Tash Hepting, Gregory Hicks, Carolyn Jewel and Erik Knutzen will and hereby do move the Court pursuant to N.D. Cal. Civil Local Rule 7-11 for an order allowing Plaintiffs to exceed the 25-page limit set forth in Civil Local Rule 7-4 by ten pages for Plaintiffs' Memorandum of Points and Authorities in support of their Opposition to Motion to Dismiss Amended Complaint by Defendant AT&T, Corporation. This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities below, the Declaration of Michael M. Markman filed herewith, and Plaintiffs' Opposition to Motion to Dismiss Amended Complaint by Defendant AT&T, Corp. and all associated papers.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiffs seek leave of the Court to file a memorandum of points and authorities of 29 pages in opposition to the motion to dismiss the amended complaint filed by AT&T Corporation in this action. Plaintiffs make this request in an effort to ensure that they are able to set forth a thorough argument to assist the Court regarding the multiple and at times complex issues raised by AT&T Corp.'s attempt to dismiss this action at the pleading stage. Plaintiffs request that the Civil Local Rule 7-4 limit of 25 pages be waived and that plaintiffs be permitted to file a brief of 29 pages.

#### **I. ARGUMENT**

In its 25-page Motion to Dismiss, AT&T Corp. ("AT&T") advances multiple arguments in an effort to dismiss this case at the pleading stage. AT&T advances three distinct (and, Plaintiffs submit, novel) theories of immunity for the otherwise wrongful activities set forth in the Amended Complaint – immunity under two statutes, common-law immunity, and qualified immunity. These arguments raise critically important issues that implicate Plaintiffs' constitutional rights, as well as the rights of others to file suit against a telecommunications company based on unlawful electronic surveillance. AT&T's theory of statutory immunity also requires a discussion of a sometimes complicated statutory regime. AT&T simultaneously attacks Plaintiffs' standing, requiring a detailed discussion of the facts supporting Plaintiffs' injuries and the causation underlying them. And, AT&T also asks the Court to apply a heightened pleading requirement that would require Plaintiffs to plead the non-existence of an authorization by the government in order to state a claim.

1 This case raises fundamental issues concerning the constitutional rights of Plaintiffs, and a  
2 class that may number in the hundreds of thousands, concerning AT&T's unlawful electronic  
3 surveillance of an enormous number of communications (including internet messages and  
4 telephone conversations), as well as a massive amount of data concerning communications.  
5 Plaintiffs seek only an additional four pages in which to brief legal argument concerning the  
6 multiple issues raised by AT&T's motion, due to the number and complexity of the issues they  
7 have raised. Plaintiffs had hoped that the parties could reach an agreement regarding the limited  
8 relief now sought from the 25-page brief size set by the Civil Local Rules, but AT&T refused to  
9 consent to Plaintiffs' reasonable request.

## 10 **II. CONCLUSION**

11 For the above reasons, plaintiffs request that this Court permit Plaintiffs to file a brief of up  
12 to 29 pages.

14 DATED: June 6, 2006

Respectfully submitted,

15 ELECTRONIC FRONTIER FOUNDATION

16 By \_\_\_\_\_

17 Cindy A. Cohn, Esq. (SBN.145997)  
18 Lee Tien, Esq. (SBN 148216)  
19 Kurt Opsahl, Esq. (SBN 191303)  
20 Kevin S. Bankston, Esq. (SBN 217026)  
21 Corynne McSherry, Esq. (SBN 221504)  
22 James S. Tyre, Esq. (SBN 083117)  
23 454 Shotwell Street  
24 San Francisco, CA 94110  
25 Telephone: (415) 436-9333 x108  
26 Facsimile: (415) 436-9993  
27  
28

1 HELLER EHRMAN LLP  
2 ROBERT D. FRAM  
3 MICHAEL M. MARKMAN  
4 ETHAN C. GLASS  
5 SAMUEL F. ERNST  
6 NICOLE ACTON-JONES  
7 NATHANIEL SHAFROTH  
8 ELENA DIMUZIO  
333 Bush Street  
San Francisco, CA 94104  
Telephone: 415/772-6000  
415-772-6268 (fax)

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
REED R. KATHREIN  
JEFF D. FRIEDMAN  
SHANA E. SCARLETT  
MARIA V. MORRIS  
100 Pine Street, Suite 2600  
San Francisco, CA 94111  
Telephone: 415/288-4545  
415/288-4534 (fax)

8 TRABER & VOORHEES  
9 BERT VOORHEES (137623)  
bv@tvlegal.com  
10 THERESA M. TRABER (116305)  
tmt@tvlegal.com  
11 128 North Fair Oaks Avenue, Suite 204  
Pasadena, CA 91103  
Telephone: 626/585-9611  
12 626/ 577-7079 (fax)

LAW OFFICE OF RICHARD R. WIEBE  
RICHARD R. WIEBE  
425 California Street, Suite 2025  
San Francisco, CA 94104  
Telephone: 415/433-3200  
415/433-6382 (fax)

13 LERACH COUGHLIN STOIA  
14 GELLER  
15 RUDMAN & ROBBINS LLP  
16 ERIC ALAN ISAACSON  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

## CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the following non-CM/ECF participants:

David W. Carpenter  
Sidley Austin Brown & Wood LLP  
Bank One Plaza  
10 South Dearborn Street  
Chicago, IL 60600

David L. Lawson  
Sidley Austin Brown & Wood  
172 Eye Street, N.W.  
Washington, DC 20006

By /s/  
Cindy A. Cohn, Esq. (SBN.145997)  
ELECTRONIC FRONTIER FOUNDATION  
454 Shotwell Street  
San Francisco, CA 94110  
Telephone: (415) 436-9333 x108  
Facsimile: (415) 436-9993  
cindy@eff.org